JUDGE BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA, Plaintiff, vs. JOHN OBERT, Defendant.	)	NO. CR07-5815BHS AFFIDAVIT OF RUSSELL V. LEONARD IN SUPPORT OF MOTION TO CONTINUE TRIAL DATE

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

Russell V. Leonard, being first duly sworn and upon oath, deposes and states as follows:

1. I am the Assistant Federal Public Defender assigned to represent Mr. Obert, the defendant in this matter. Mr. Obert is accused of one count of possession of child pornography, as prohibited by 18 U.S.C. §§ 2252(a)(4)(B). If convicted, Mr. Obert faces a maximum term of 20 years in prison, with a mandatory-minimum of 10 years in prison, based on the Government's allegation that he possesses a qualifying prior conviction under 18 U.S.C. §§ 2252(b)(2).

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Tacoma, Washington 98402
(253) 593-6710

2. Mr. Obert has been detained pending the resolution of this matter, and is being held at the Federal Detention Center, at Seatac, Washington.

3. The current trial date – February 11, 2008, at 9:00 am – is the first trial setting in this matter. The parties – plaintiff, the United States of America, as represented by Jill Otake and Bruce Miyake, Assistant United States Attorneys, and the defendant John Obert – have filed an agreed motion requesting a continuance of the trial date. Mr. Obert has executed a Speedy Trial Waiver (through June 30, 2008) indicating his agreement with this request for a continuance.

4. Mr. Obert is already the subject of an indefinite, involuntary commitment order under RCW 71.09, *et seq.*, Washington state's law which allows for the detention and treatment of so-called "sexually violent predators." Mr. Obert is now accused of possessing child pornography at the Special Commitment Center (SCC), the detention facility on McNeil Island used by Washington to detain persons committed under RCW 71.09.

5. By letter dated December 28, 2007, the Government provided discovery of thirty-one pages related to its investigation. Shortly thereafter, the prosecutor emailed me court documents establishing Mr. Obert's involuntary commitment under the state law. The prosecutor has offered to conduct a discovery conference, which is a necessary next step, and I expect to be making a more specific written demand for follow-up discovery soon. From brief discovery provided to date, it is clear that other investigative reports and materials, including videotape, have not yet been disclosed. Issues regarding defense access to the alleged child pornography will need to be hammered out, including access for possible defense experts (whom the defense still needs to identify and retain). Additional time is also necessary to identify and interview potential witnesses, many of whom are either detained at or employed at the SCC, a highly restrictive, lock-down facility. The logistics of scheduling and conducting interviews at such a facility are

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Tacoma, Washington 98402
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significant. It is fair to say that an independent defense investigation has only just begun. That being said, all counsel have conferred about the status and exchange of discovery in an open and productive manner.

6. Nonetheless, it is clear that discovery is not yet complete, and that the defense requires more time to receive and review discovery, perform its own independent investigation (including possibly hiring experts) and conduct legal research prior to choosing and filing pre-trial motions and undertaking trial preparation. The parties also require more time to discuss settlement as an alternative to trial, for the sake of efficiency and in order to preserve full acceptance of responsibility credit for the defendant.

7. By their joint motion, the parties agree that the ends of justice served by granting this continuance outweigh the best interests of the public and the defendants in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). Proceeding to trial absent adequate time for the defense to prepare would result in a miscarriage of justice. 18 U.S.C. §3161(h)(8)(B)(i). The defense needs to explore issues of some complexity, including all other relevant issues and defenses applicable to the case, which would make it unreasonable to expect adequate preparation for pretrial proceedings or for trial itself within the time limits established by the Speedy Trial Act and currently set for this case. 18 U.S.C. § 3161(h)(8)(B)(ii). And finally, under 18 U.S.C. § 3161(h)(8)(B)(iv), taking into account the exercise of due diligence, a continuance is necessary to allow the defendant the reasonable time for effective preparation by the defense.

8. For all of the above reasons, the defense respectfully requests a continuance of our trial date of February 11, 2008, to a date in June of 2008, available on the Court's calendar, with a pre-trial motions cutoff and pre-trial conference consistent with this new date.

DONE this 19th day of January, 2008.

FEDERAL PUBLIC DEFENDER
1331 Broadway, Suite 400
Tacoma, Washington 98402
(253) 593-6710

Russell V. Leonard

SUBSCRIBED AND SWORN to before me this 30 day of January, 2008.

AMY S. STRICKLING NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 7-09-11

Amy Strickling
Notary Public for the State of Washington.
Residing at Tacoma.
My appointment expires: 07/09/11

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